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07 CV 6144

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Judge Berman

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NBTY, INC.

Plaintiff,

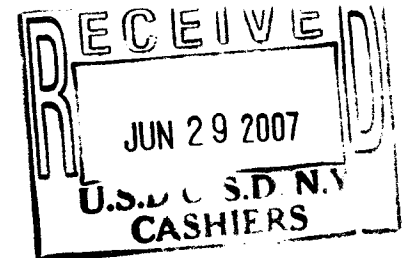
Index No.

- Against -

Complaint

AIR CHINA,

Defendants.
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The Plaintiff, NBTY, INC., and through its attorneys, Hill Rivkins & Hayden LLP, complaining of the above-named defendant, alleges upon information and belief:

FIRST: This Court has jurisdiction pursuant to 49 U.S.C. § 1502, in that this was an international air carriage of cargo departing from PVG, Shanghai, China, and arriving in the United States.

SECOND: At and during all times hereinafter mentioned, Plaintiff, NBTY, INC., was and now is a corporation or other business entity organized and existing by virtue of the laws of Delaware, with an office and place of business at 90

Orville Drive, Bohemia, New York 11716.

THIRD: At and during all times hereinafter mentioned, Defendant, AIR CHINA, was and now is a corporation or other business entity organized and existing by virtue of the laws of Washington with an office and place of business at Cargo Building 261, 2d Floor, JFK International Airport, Jamaica, New York 11430 and was and now is a common carrier, warehouseman and/or bailee.

FOURTH: On or about March 29, 2006, there was delivered to the defendant in good order and condition a shipment of Ubidecarenone, suitable in every respect for the intended transportation which defendant received, accepted and agreed to transport and/or store for certain consideration.

FIFTH: Thereafter, the defendant failed to redeliver the shipment in the same good order and condition.

SIXTH: Plaintiff was the shipper, consignee or owner of said shipment and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

SEVENTH: By reason of the premises, the defendant was negligent and careless in its handling of Plaintiff's cargo, violated its duties and obligations as a common carrier and bailee of the cargo, and was otherwise at fault.

EIGHTH: Plaintiff has duly performed all duties and obligations on its part to be performed.

NINTH: By reason of the premises, Plaintiff has sustained damages as nearly as same can now be estimated, no part of which has been paid, although duly demanded, in the total amount of \$60,000.00.

W H E R E F O R E, Plaintiff prays:

1. That a decree may be entered in favor of Plaintiff against Defendant for the amount of Plaintiff's damages, together with interest and costs.

2. Plaintiff further prays for such other, further and different relief as to this Court may deem just and proper in the premises.

Dated: New York, New York
June 28, 2007

Respectfully submitted,

HILL RIVKINS & HAYDEN LLP
Attorneys for Plaintiff
NBTY, INC.

By: 
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